CIRCUIT COURT OF CITY OF RICHMOND.

GRAHAM B. HOBSON *v.* CITY OF RICHMOND.

(April 28, 1919.)

1. Public Officers—Vested Interest in Office—Abolition.—A public officer has no vested interest in an office which is protected by the provisions of the Federal or State Constitutions against the abolition of the office so held.

2. Public Officers—Abolition of Municipal Office—Salary.—The General Assembly may abolish a municipal office by the enactment of a special or local act in the mode prescribed by the Constitution, and, as a consequence the salary attached to said office is thereby abolished.

3. Public Officers—Constitutionality of Statute Abolishing Municipal Office.—The Act of the General Assembly which became effective January 1, 1919 (Acts 1918, p. 180) amending the Charter of the City of Richmond, whereby it is provided: "The Board known as the Administrative Board of the City of Richmond, as the same now exists under the acts of the General Assembly is hereby abolished" is constitutional and a valid exercise of the powers vested in the General Assembly under section 117 of the Constitution of this State.

4. Interpretation and Construction—Whole Instrument Examined.—It is a proper rule of construction where any part of an instrument is intricate, obscure or doubtful, that the whole instrument is to be examined with a view of arriving at the true intention of each part thereof.

E. C. Folkes and *J. T. Bethel,* of Richmond, for the plaintiff.

H. R. Pollard, City Attorney for the City of Richmond, for the defendant.

HON. R. CARTER SCOTT, J. The plaintiff in this case, Graham B. Hobson, was elected by the qualified voters of the City of Richmond on November 7, 1916, a member of the Administrative Board of said City for a term of three years beginning January 1, 1917 to end December 31, 1919. He duly qualified and served at a salary duly fixed by ordinance of $5,000.00 per annum payable monthly until January 1, 1919, at which time the City of Richmond advised him that the office was abolished by Act of the General Assembly. On January 1, 1919, he in good faith offered to continue to perform the duties of his public office until the end of the term for which he had been elected, but his services were refused by the City; this offer has been kept good to the present time. On February 1, 1919, he demanded payment of his salary but was refused. The salary

due him at that time for the month of January amounted to $416.66, upon said refusal he prosecutes this action.

The stipulations of counsel Nos. 1 and 2 set forth the agreed facts of the case:

STIPULATION OF COUNSEL No. 1.

The following are agreed to be the facts in the above entitled case:

1. That the Administrative Board of the City of Richmond was created by an act of the General Assembly of Virginia approved February 9, 1912, by amendment to the existing charter of the City of Richmond (Acts 1912, p. 43-45, sections 30-a and 30-b), which sections of the said act were amended by an act of the General Assembly approved March 4, 1916, (Acts 1916, p. 177-8), and by the terms of the Act the power was conferred upon the Council of the City of Richmond to fix the salaries of the members of the said Administrative Board at not less than $4,000 per annum.

2. That by an ordinance of the Council of the City of Richmond approved July 12, 1912, the salaries of the members of the Administrative Board of the City of Richmond were "fixed at five thousand dollars per annum, payable as the salaries of other City officers are paid." (Certain resolutions and ordinances of the Council of the City of Richmond 1910-1912, p. 366.)

3. That Graham B. Hobson, the plaintiff, a legally qualified voter of the City of Richmond, was, on the 7th day of November, 1916, duly elected as a member of the Administrative Board of the City of Richmond for a term of three years and thereafter, within the period prescribed by law, he duly qualified as such member, and on the first day of January, 1917, entered upon the discharge of his duties as member of said Board, for the term for which he was elected, and continued to discharge such duties until the 31st day of December, 1918, when his further service as member of the said Board was dispensed with and declined by the defendant, the City of Richmond, for the alleged reason that the Administrative Board had been abolished by virtue of an act of the General Assembly of Virginia approved March 6, 1918, which was ratified at an election held in the City of Richmond on August 6, 1918, in pursuance of the provisions of the said Act of March 6, 1918, which Act became effective January 1, 1919, (Acts 1918, p. 209-210), and which, by its express terms, was an amendment of certain sections of the existing Charter of the City of Richmond.

4. That on the first day of January, 1919, the said Graham B. Hobson notified the City of Richmond in writing that he was ready and willing to continue to perform his duties as member of the Administrative Board of the City of Richmond, or such other duties as might be assigned him for performance by the City of Richmond, but such services were refused by the City of Richmond.

5. That on the first day of February, 1919, when the monthly pay to which the said Graham B. Hobson would have been entitled had his salary not been abolished by the Act of the General Assembly approved March 6, 1918, he demanded the same, but payment was refused on the ground that his salary as a member of the said Administrative Board had been abolished by virtue of the said Act of the General Assembly hereinbefore referred to, and that the sum of $416.66 claimed by the said Graham B. Hobson, for the month of January, 1919, has not been paid, though demanded by him as aforesaid.

6. That at the trial all relevant ordinances of the City of Richmond, relating to the issues, may be read in evidence and considered by the court.

Signed: E. C. FOLKES,
J. T. BETHEL,
Counsel for Graham B. Hobson.
H. R. POLLARD,
City Attorney.
Counsel for the City of Richmond.

STIPULATION OF COUNSEL NO. 2.

It is stipulated and agreed between counsel in this case as follows:

1. That the amendments to the Charter of the City of Richmond which became effective January 1, 1919, were embodied in House Bill No. 395, passed at the 1918 Session of the General Assembly of Virginia and approved March 6, 1918. (Acts 1918, p. 180-210.)

2. That on the introduction of the said bill into the General Assembly the same was referred to the Committee on Special, Private and Local Legislation, in accordance with section 51 of Article IV of the State Constitution, and the subsequent procedure before the General Assembly was in accordance with the requirements of the Constitution in regard to Special, Private and Local Bills.

Signed: E. C. FOLKES,
J. T. BETHEL,
H. R. POLLARD,
City Attorney.

There is no claim asserted to this salary on the ground that he has a vested interest in said office which is protected by the provisions of the Federal or State Constitution. If it were the law is against any such contention. Cooley on Const. Lim., p. 336; Butler *v.* Pennsylvania, 10 How. 402; McQuillan on Municipal Ordinances, § 231; Connor *v.* Mayor, etc., 1st Selden, 5 N. Y. 285; Moore *v.* Strickling, 46 W. Va. 515; State *v.* Hawkins, 44 Ohio State, 99; Dillon on Municipal Corp., vol. 1, § 423; McQuillan on Municipal Corporations, vol. 2, § 519. The sole contention on the part of the plaintiff is as taken from the language of his brief: A Special or Local Act of General Assembly of Virginia (see § 36, page 2 of the Acts of 1918), attempted and purports to abolish the salary due the aforementioned public officer for the period January 1, 1919, to January 1, 1920. It is therefore contended by this plaintiff and is the Crux of this case that the General Assembly of the State of Virginia did not or cannot by a Special or Local Act abolish his salary, that of a public officer for any part of the term for which he has been elected and thereby circumvent and make nugatory the solemn inhibition of our State Constitution laid down in Article IV, § 63, of the Constitution of the State of Virginia from which, eliminating the irrelevant words reads:

"63 * * * The General Assembly shall not enact any local, special or private law in the following cases: 14 * * * decreasing or authorizing to be * * * decreased the salaries * * * of public officers during the term for which they are elected * * *."

It is admitted at the very beginning that the plaintiff would have no rights to salary under our former Constitution, for its only protection to salaries of public officers was for the "Judges of the State * * *."

It is further argued "The language can have but one interpretation, that the public officer has his salary guaranteed him *for the term for which he was elected or appointed* against invasion by a Special, Private or Local Act of the legislature."

It might be conceded for the sake of the argument only that if this provision stood alone in the Constitution that this position would be sound and the provision found in the amended Charter of the City of Richmond which became effective January 1, 1919, which is in the following language:

"109. That sections thirteen-b, thirty-a, thirty-b, thirty-c, thirty-d, thirty-e, thirty-f, thirty-g, thirty-h, thirty-i, thirty-j, ninety-three-a, ninety-three-b, ninety-three-c, ninety-three-d, ninety-three-e, ninety-three-f, ninety-three-g, ninety-three-h, ninety-three-i, ninety-three-j, ninety-three-k, ninety-three-l, ninety-three-m, ninety-three-n, ninety-three-o, ninety-three-p, ninety-three-q, ninety-three-r, ninety-three-s, and one hundred

and nine of the charter of the City of Richmond be, and the same are hereby repealed; and the Board known as the Administrative Board of the City of Richmond, as the same now exists under the Acts of the General Assembly, is hereby abolished, and that the Board known as the Board of Fire Commissioners of the City of Richmond, as it now exists under the Acts of the General Assembly, be, and the same is hereby abolished;"

would be unconstitutional. The Legislature by this Act abolished said Board and all provisions of the former charter which conferred upon them as a board any powers or duties.

In this situation the question arises, is there any other provision in the Constitution of the State authorizing amendments to an existing Charter at the time that the Constitution went into effect. An examination of the Constitution will show that by § 117, an exception is made to the limitation upon the Legislature contained in clause 14 of § 63, by means of which existing charters of municipal corporations were expressly authorized to be amended in the manner provided by Article IV of the Constitution. The language that makes the exception and authorizes the amendment is as follows:

"Sec. 117 General laws for the organization and government of cities and towns shall be enacted by the General Assembly, and no special act shall be passed in relation thereto, except in the manner provided in Article four of this Constitution, and then only by a recorded vote of two-thirds of the members elected to each house, and except also in the ease of cities having more than fifty thousand inhabitants as hereinafter proprovided. But each of the cities and towns of the State having at the time of the adoption of this amendment a municipal charter may retain the same, except so far as it shall be repealed or amended by the General Assembly; provided that every such charter is hereby amended so as to conform to all the provisions, restrictions and powers set forth in this article, or otherwise provided in this Constitution."

It is admitted that the amendment to the Charter abolishing the Administrative Board was passed in accordance with this provision of the Constitution; such being the case, the Act so far as it abolishes the Administrative Board is constitutional and it is for the Court to determine in this case what is the proper interpretation to be placed on these two constitutional provisions, which at the first blush may seem to be contradictory. A well-known canon of construction requires that in construing constitutions the whole of the instrument must be read and considered and not an isolated provision in order to ascertain the intent of the legislative body in enacting the law.

On this point Judge Cooly in his work on Constitutional Limitations, at pp.70-71, says:

"Nor is it likely to be inferred that any portion of a written law is so ambiguous as to require extrinsic aid in its construction. Every such instrument is adopted as a whole and a clause which standing by itself might seem of doubltful import may yet be made plain by comparison with other clauses or portions of the same law. It is therefore a very proper rule of construction that *the whole is to be examined with a view to arriving at the true intention of each part;* and this Sir Edward Coke regards the most natural and genuine method of expounding the Statute. If any section (of a law) be intricate, obscure or doubtful, the proper mode of discovering its true meaning is by comparing it with the other sections and finding out the sense of one clause by the words or obvious intent of another * * * The rule applicable here is that effect is to be given if possible to the whole instrument and to every section and clause. If different portions seem to conflict the courts must harmonize them if practicable and must lean in favor of a construction which will render every word operative rather than one which may make some idle and nugatory."

Keeping in mind this canon of construction we see first that the constitution allows cities to change their organization and government by special act and it is admitted (Clause 2, Stip. No. 2) that this special act is constitutional and that the Administrative Board is abolished by Constitutional act and there is no longer in existence any office or any officer of the Administrative Board.

Now did the Constitution mean to give the power to a city by special act to change merely the form of government but still provide that the salaries of those officers should exist and is such a construction the proper one to be placed on clause 14 of § 63, of the Constitution? If such be the construction it would seem that although the organization and form of government might be constitutionally changed yet the City would be compelled to bear the burden and the change allowed would be merely in name only. What is the true meaning of clause 14 of § 63, under the admitted facts of this case? In the opinion of the Court it merely binds the hands of the legislature and prevents them from passing any special act increasing or diminishing salaries of public officers whose offices are in existence and which cannot be constitutionally abolished and does not apply to an office which has been abolished by the legislature by a constitutional act. When an office has been legally abolished there can be no longer any officer and therefore no longer any salary, and clause 14 of § 63, does not guarantee the

salary to an officer whose office is abolished by a constitutional act.

"Of course there may be an office without emoluments, but there can be no such thing as emoluments of office where there is no office. The very statement of the proposition involves a contradition in terms." Jones *v.* Shaw, 15 Texas, 579.

I have with great interest and much time made careful examination of the authorities and cases cited in support of the plaintiff's contention. It would serve no good purpose to review them. In the opinion of the Court they all refer to offices which were in existence and which the legislature had no right to abolish. I have also examined many other cases cited by Mr. Throop in his work on "Public Offices, § 19. I have been able only to find one case which seems to me to be almost on all fours with the case under consideration. This case (The State ex rel Irving Halsey *v.* James L. Gaines, Comptroller, 2 Lea (70 Tenn.) 316), confirms the opinion of this court. In this case a court was abolished by legislative act. The act was adjudged constitutional and valid and the court ceased to exist. Thereupon the judge instituted proceedings for his salary for his unexpired term for which he was elected. Upon appeal it was held: "That a judge whose court has been abolished by the legislature ceases to be a judge of the State and is not thereupon entitled to salary for the balance of his term of office so abolished," although there were provisions in the Constitution which provided that his term should be for eight years and that his salary should not be increased or diminished during the term for which he was elected.

See also McVey *v.* Burris, 49 Atl. Rep., p. 930; Bogue *v.* Seattle, 19 Wash. 396; Hall *v.* State, 39 Wis. 79; Barley *v.* State, 5 Miss. 637; Com. *v.* McCombs, 56 Pa. St. 436; Com. *v.* John Weir, 165 Pa. St. 284.

The Court is of opinion therefore that a judgment should be entered in favor of the defendant and an order will be so entered.

Note.

A petition for writ of error and supersedeas in the above case was presented to the Supreme Court of Appeals of Virginia and refused at Wytheville on June 12, 1919.